

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BILLY G. MARSHALL,)
vs. Plaintiff,) NO. CIV-14-0912-HE
W. RANKINS, ET AL.,)
Defendants.)

ORDER

Plaintiff, a state prisoner appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. He alleges violations of his constitutional rights related to the conditions of his confinement at Davis Correctional Facility in Holdenville, Oklahoma. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell. He concluded that venue is improper in this judicial district and has recommended that the action be dismissed without prejudice pursuant to 28 U.S.C. § 1406(a). Plaintiff has objected to the Report and Recommendation only insofar as it recommends that the case be dismissed, rather than transferred to the Eastern District of Oklahoma where venue would be proper. *See* 28 U.S.C. § 1391(b)(2).

The court concurs with Magistrate Judge Purcell that venue is improper in this district. However, after considering whether transfer would serve the interests of justice, *see* 28 U.S.C. § 1406(a), the court concludes the case should be transferred. *See Faulkenburg v. Weir*, 350 Fed. Appx. 208, 209 (10th Cir. 2009).

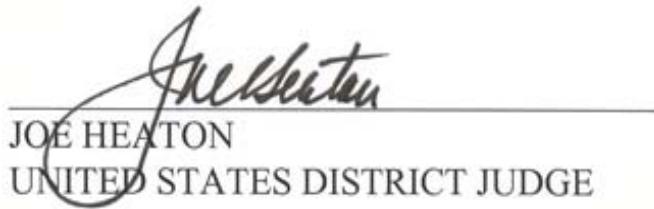
Although plaintiff's claims would not appear to be time-barred if dismissed and

refiled, it seems plaintiff filed this action in the wrong forum by accident rather than design. As for the remaining factor – whether plaintiff's claims are likely to have merit – the court cannot make that determination on the basis of the record before it. Therefore, with the factors equally balanced, the court concludes it should exercise its discretion and transfer the action. *See* 28 U.S.C. § 1406(a).

Accordingly, this action is **TRANSFERRED** to the United States District Court for the Eastern District of Oklahoma.

IT IS SO ORDERED.

Dated this 22nd day of September, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE